IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 3:18-CV-00612-RJC-DSC

WILL SUMMERS JR et. al.,)	
)	
Plaintiffs,)	
)	
v.)	<u>ORDER</u>
)	
CITY OF CHARLOTTE,)	
)	
Defendant.)	

THIS MATTER is before the Court on "Plaintiffs' Motion for Sanctions" (document # 84) filed August 3, 2021, as well as the parties' briefs and exhibits.

In their Motion, Plaintiffs seek an order compelling Defendant to comply with the Court's previous Orders, imposing monetary sanctions, and warning Defendant that further sanctions may be imposed.

The Court has carefully reviewed the record, the authorities and the parties' arguments. The Court has entered <u>six</u> Orders compelling Defendant to comply with its discovery obligations. <u>See</u> "Order[s]" (documents ##37, 56, 76, 79 and 82) and Text-Only Order entered February 1, 2021. <u>Defendant has failed to comply fully with the Court's Orders entered on June 10 and June 17, 2021. <u>See</u> Documents ##79 and 82. Plaintiffs seek to recover their costs in obtaining those Orders as well as the costs incurred for this Motion.</u>

In its brief, Defendant repeats objections to discovery requests which the Court has previously overruled. Plaintiffs ask the Court to require Defendant to state with specificity what efforts it has made to search for responsive documents and other information and to identify

anything that has been lost or destroyed. Given Defendant's failure to cooperate throughout the discovery process, the Court finds that such an order is appropriate.

Accordingly, in complying with the Court's ORDER below, Defendant shall:

- Identify which offices and file rooms Defendant searched and when, who searched
 the offices and file rooms, what computer drives were searched, what key words
 were searched, what employee files and emails were or are being searched, whether
 deleted emails have been searched and the parameters of the search, and when each
 search was conducted; and
- Declare any documents that have been lost, discarded, or destroyed in a complete
 and verified response to Interrogatory No. 40 and identify everyone who had access
 to the documents as well as any other persons who lost, discarded, or destroyed
 them.

The Court also finds that Plaintiffs are entitled to an award of their costs including reasonable attorneys' fees incurred in preparation of <u>this</u> Motion.

Entry of judgment, waiver of defenses, and the imposition of monetary sanctions are remedies available under Rule 37 for a party's failure to obey rules governing discovery and orders of the District Court. See Fed. R. Civ. P. 37(b)(2)(C); National Hockey League v. Metro. Hockey Club, 427 U.S. 639, 643 (1976); Mutual Fed. Sav. & Loan v. Richards & Assocs., 872 F.2d 88, 92 (4th Cir. 1989); Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 504-04 (4th Cir. 1977).

The Court warns Defendant that failure to comply fully with the Court's Orders (documents ##79 and 82), to respond to any other of Plaintiffs' reasonable discovery requests, or to otherwise comply fully with any of the Court's other Orders, the Local Rules, or the Rules of Civil Procedure may result in the imposition of sanctions. **Sanctions may include Defendant or Defendant's**

counsel being ordered to pay Plaintiffs' costs including reasonable attorney's fees in their

entirety and may also include entry of judgment.

IT IS HEREBY ORDERED that:

1. "Plaintiffs' Motion for Sanctions" (document # 84)" is GRANTED IN PART and

DENIED IN PART. Within fifteen days of the date of this Order, Defendant shall

fully comply with the Court's Orders (documents ##79 and 82) by serving complete

verified supplemental discovery responses to the subject discovery requests. If

Defendant contends that it has fully responded to a particular discovery request, it shall

so state in a verified discovery response.

2. Plaintiffs are **AWARDED** their costs including reasonable attorneys' fees incurred in

preparation of this Motion. Within seven days, Plaintiffs' counsel shall submit an

affidavit of costs and attorneys' fees incurred in preparation of this Motion.

3. The Clerk is directed to send copies of this Order to counsel for the parties and to the

Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: September 10, 2021

David S. Cayer

United States Magistrate Judge